

The Retailers' Occupation Tax Act imposes a tax upon persons engaged in the business of selling tangible personal property at retail in Illinois. See 86 Ill. Adm. Code 130.101. (This is a GIL.)

February 26, 1999

Dear Mr. Xxxxx:

This letter is in response to your undated letter received by our office on October 5, 1998. We have provided further materials to you on December 15, 1998 and have telephoned you on January 1, 1999 to allow you to provide the information necessary for the Department to issue a Private Letter Ruling. Since you have not responded, the nature of your letter and the information you have provided require that we respond with a General Information Letter which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

The client is in the business of selling unglazed pottery - dishes, platters, etc. - to the public.

The procedure used by our client is that the unglazed product is sold and sales tax is collected on the sale. The purchaser is then allowed to use workspace set aside in the client's establishment, wherein the purchaser paints a design of his/her choice on the plate or other product purchased. The purchaser is charged \$8.00 per hour rent to use the working area. Paints, brushes, and other incidental materials are supplied by the client. After the purchaser has completed the painting work the final product is fired and glazed in our client's kiln.

The purchaser can avoid the \$8.00 per hour charge by painting and glazing the product at another location, if that is what they want to do.

Issue:

Is the \$8.00 per hour our client charges to the purchasers to be considered a rental charge for giving the purchaser workspace to decorate and paint the product, or is it considered a sale of product and subject to Illinois sales Tax?

We thank you in advance for your response to this question.

The Retailers' Occupation Tax Act imposes a tax upon persons engaged in the business of selling tangible personal property at retail in Illinois. See the enclosed copy of 86 Ill. Adm. Code 130.101. Retailers' Occupation Tax liability is incurred on all the gross receipts received by the seller for the sale of tangible personal property, except traded-in tangible personal property. See the enclosed copy of 86 Ill. Adm. Code 130.401. Sellers of unglazed pottery to the public generally incur Retailers' Occupation Tax liability on the gross receipts from those retail sales.

Retailers' Occupation Tax liability is incurred on any tangible personal property that is transferred to customers who rent the use of the premises, such as paint and pottery glaze for example. The transfers of these items are considered sales of tangible personal property. Retailers' Occupation Tax is incurred on the entire charge for using the premises when any tangible personal property is transferred incident to the rental of the premises unless the transferor separately states the charge for transferred property. For example, if a rentor of the premises charged \$5.00 to rent the premises and made a separately stated charge of 50 cents for the transferred property, the rentor's Retailers' Occupation Tax liability on such a sale would be based upon the 50 cents received as gross receipts from the sale. If such a taxpayer were audited and the charge for the transferred property was not separately stated, the Department's auditors would have to use their best judgment and information to assign a value to the transferred property that is subject to tax.

Please note that any tangible personal property that is provided for use by customers on those premises, such as paint brushes, would be considered to be used by the rentors providing that property. The rentors incur Use Tax liability on the purchase price of those items. See the enclosed copy of 86 Ill. Adm. Code 150.201.

I hope this information is helpful. The Department of Revenue maintains a Web site which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Terry D. Charlton
Associate Counsel

TDC:msk
Encl.